United Nations S/2004/70

Security Council

Distr.: General
26 January 2004

Original: English

Note by the President of the Security Council

In compliance with paragraph 21 of the work programme for the ninth 90-day period (S/2003/995, annex), the attached report of the Chair of the Counter-Terrorism Committee on the problems encountered, both by States and by the Committee, in the implementation of resolution 1373 (2001) (see annex) is hereby circulated for the attention of the members of the Council.

04-21997 (E) 290104

Annex

Report by the Chair of the Counter-Terrorism Committee on the problems encountered in the implementation of Security Council resolution 1373 (2001)

TABLE OF CONTENTS

INTRODUCTION

I. LEGAL FRAMEWORK

II. DIFFICULTIES OF STATES IN IMPLEMENTING THE RESOLUTION

A. Financing of terrorism

B. Competence of the courts

C. Ratification without enforcement measures

D. Links between terrorism and organised crime

E. Links between terrorism and illegal movement of nuclear, chemical, biological and other potentially deadly materials

III. TECHNICAL ASSISTANCE

IV. COORDINATION AND COOPERATION WITH INTERNATIONAL, REGIONAL AND SUB-REGIONAL ORGANIZATIONS

V. CTC'S STRUCTURE AND PROCEEDINGS

A. CTC's procedures

A.1. Re-identifying Stages A, B and C

A.2. The need for consistency

A.3. Decision making mechanism

A.4. Adequate follow-up of CTC's decisions

A.5. CTC's information sources

B. Financial accountability

C. Communications Policy

D. The Chair

E. The Bureau

F. The Secretariat

G. The Experts

VI. GENERAL CONCLUSIONS

INTRODUCTION

This report emerges from the engagement taken by the Chair of the CTC in the ninth 90-day period working programme of the CTC (paragraph 2(b)). The report intends to identify the problems witnessed through the work of both the CTC and the Member States in relation to the implementation of Resolution 1373 (2001).

Although this report emanates from the Chair, and therefore it is subject to its judgment and its responsibility, the Chair of the CTC has had several meetings with the Member States of the CTC with the intention to produce a report that takes into account the shared opinion among all the members of the CTC.

I. LEGAL FRAMEWORK

Resolution 1373 constitutes a landmark in the international fight against terrorism by creating formal obligations to all 191 UN Member States and with the ambitious task of raising the average level of government performance against terrorism all over the world. The Resolution covers a wide range of fields and has been complemented by the ministerial declarations attached to UNSC Resolution 1377 and to Resolution 1456. Through these Resolutions the Security Council has established the intimate link between the fight against terrorism and other priorities of the United Nations. Especially relevant is that States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular human rights, refugee, and humanitarian law.

Since the establishment of the CTC, its work and accumulated data have developed and increased to include not only numerous reports comprising various information and legislative measures undertaken by Member States to implement the Resolution, but also liaison activities with international and regional organizations which evolved into collecting information regarding their own anti-terrorism work, agenda, measures and concerns. Thus, today the CTC is in possession of and has an accelerating access to a vast amount of measures and information that are all interrelated in the fight against terrorism. For example, a connection between illicit trafficking in weapons of mass destruction and trans-national organized crime on the one hand, and terrorism on the other hand, was noted in Resolution 1373. However,

CTC practice has shown that anti-terrorism measures related to those fields is interrelated to- and inseparable - from anti-terrorism measures under the Resolution.

II. DIFFICULTIES OF STATES IN IMPLEMENTING THE RESOLUTION

A. Financing of Terrorism

According to paragraph 1 (a) of UNSCR 1373, prevention and suppression of the financing of terrorism is crucial to the Resolution, in order to deprive terrorist groups of one essential means to commit their crimes. However, implementation of this basic obligation of the Resolution has the effect of placing new burdens on banking institutions and financial professions. In certain cases some States argue that the existence of anti-money-laundering legislation is enough to prevent the financing of terrorism. Yet, anti-money-laundering measures do not sufficiently take into account transfers of terrorist funds, which have different characteristics from other criminal funds (for example, they may have a legal origin). The fight against the financing of terrorism should cover anti-money laundering but should also include specific measures taking into account the specific nature of this problem.

Efforts to prevent the financing of terrorism are therefore undermined by the lack of transparency of international financial transactions and the weakness of national legislation to prevent inflows of criminal money. As stated in paragraph 4 of the Resolution, the situation is in every aspect identical to that of the recycling of funds from major trafficking activities (drugs, weapons, works of art, dangerous materials, and corruption). A sizable effort by the international community will be required to improve matters.

We must also be aware that even if the whole banking system is protected from transactions, related directly or indirectly with terrorist, it still wont be enough to prevent terrorist from having access to other sources of financing. Measures that will improve State control over illegal or even informal financing system should be considered as an essential complement to the present banking regulations.

The identification and freezing of terrorist funds are an obligation under paragraph 1 (c) of the Resolution and require States to have administrative or judicial machinery to block criminal funds as a matter of urgency. It should be possible for this

"freeze" to be ordered at the initiative of the competent authorities, the Security Council or at the request of a third State. States' domestic laws too often do not contain such a provision, and steps must be taken to create such machinery. Similarly, the whole question of procedures for seizure of criminal assets remains unresolved in many countries, particularly regarding procedures for mutual international judicial assistance.

Certain non-profit associations have been used by terrorists, either to disseminate terrorist propaganda or by collecting funds that are diverted for the benefit of terrorist groups. It is particularly difficult to monitor such associations, both for technical reasons (the sector is by nature informal) and for political reasons (increased oversight of the associations is considered to be a restriction of public freedoms). In fact, there is hardly any monitoring of the finances, structures and activity of the associations in the context of counter-terrorism requirements. Certain recommendations have been made by international organizations on this subject, that should be disseminated to States, following the provisions contained in paragraphs 1 and 2 of the Resolution.

B. Competence of the courts

The Resolution, in its paragraphs 2(c) and 2 (e), obliges States to prosecute and try all those responsible for acts of terrorism, wherever they are committed. This measure is designed to ensure that terrorists have no place of refuge, since each State will be competent to try them or extradite them. However, some States have shown certain reluctance to create such mechanism in their legislation. Therefore, very broad ratification of the anti-terrorist conventions is among the methods used to achieve this goal of the Resolution, so as to create an international co-operation network and institutional machinery for mutual assistance and extradition. Ratification of the international conventions by all UN Member States is therefore a priority goal for the achievement of the task of the CTC. A further method that is also essential for creating a network of international co-operation is to have laws on mutual assistance in criminal matters in place among all States.

C. Ratification without enforcement measures

For reasons previously explained, universal ratification of the international anti-terrorist conventions is an important way to broaden anti-terrorist activities, as stated in paragraph 3 (d) of the Resolution. A significant impetus to ratification was initiated in 2001 and many countries have become party to the main conventions, although

important regional disparities remain. However, the reports submitted to the CTC reveal that too many countries ratify these conventions without proceeding to adopt internal enforcement measures, without which these conventions can have no practical effect. There must be follow-up machinery, either through technical assistance programmes or as part of the work of CTC, in order to monitor the relevance and effectiveness of the implementation of these conventions.

D. Links between terrorism and organized crime

Organized crime and terrorism are "two sides of the same coin". The manifestations of these two types of criminality are often similar in their modus operandi and in their effects. In addition, it has been observed that trafficking generated by organized crime (drugs, weapons, contraband) often constitutes one of the sources of financing for terrorists. Thus efforts to combat organized crime are a direct means of preventing terrorist phenomena, as it is pointed out in paragraph 4 of the Resolution. Publicity about means of combating organized crime, such as ratification of the relevant conventions on the subject, increased monitoring of transactions involving highly valuable objects (precious metals and gems) or sensitive materiel (weapons, dangerous materials) should be given greater attention by the CTC in its dialogue with States.

E. Links between terrorism and illegal movement of nuclear, chemical, biological and other potentially deadly materials

Illegal movement and/or trafficking in nuclear, chemical, biological and other materials are interrelated with the fight against terrorism in general, and with the Resolution in particular (the latter's interrelation originates from measures under the Resolution aimed at preventing the threat posed by the possession of weapons of mass destruction by terrorist groups, contained in paragraph 2, 3(a) and 4 of UNSCR 1373). For example, measures like border and exports control, early warning, and the exchange of information may contribute effectively to enhance the measures undertaken by WMD-related international organizations aimed at preventing the possession of the above materials by terrorist groups. To such end, the CTC should play a more pro-active role in promoting effective implementation of the anti-terrorism action plans of those WMD related International Organizations, existing legal obligations in the field of disarmament, arms limitation and non proliferation, as well as those regional and international instruments aimed at combating the illicit

manufacturing and trafficking of small arms and weapons. In order to do it in an efficient way, the CTC needs expertise in areas such as WMD, small arms, Self-Portable Air Defence Systems (MANPADS), etc.

III. TECHNICAL ASSISTANCE

Technical assistance is one of the main components of the CTC's work. It contributes to help States build their capacities to combat terrorism; it facilitates interstate co-operation; and it improves the protection of States against terrorism. Offering assistance to States, which are willing to avail themselves of it, will enhance their technical capabilities in attaining international counter-terrorism standards. In addition, assistance is also important for those States having difficulties in implementing the outlined measures of Resolution 1373.

Although the CTC does not directly provide technical assistance to the States, it presently functions as a switchboard between the requests and the donors of assistance. In this sense, both the CTC Assistance Matrix and the Directory have been important tools as a guide to the assistance needs of States. However, as the CTC is assuming a more proactive role in technical assistance, its present structure and working methods, in this particular field, need to be revisited in order to increase its efficiency. In order to make both the Matrix and the Directory useful instruments, the CTC will need a procedure allowing itself to decide which assistance given or offered by States and international organizations is directly related to the fight against terrorism and therefore should be included. The reformed Matrix and Directory should also be updated on a day to day basis.

It is crucial for the CTC to play a more proactive role in the following critical areas:

a. Evaluate and prioritize the specific needs of States in relation to technical assistance. It must also conduct consultations with States in order to assist in assessing the gaps in their capacity and related assistance needs, including through field missions, with the consent of States and in collaboration with regional and international organizations, as appropriate. Advise each State on the sources and availability of assistance in the

context of the priorities set by the CTC. Provide guidance to States on how to request assistance.

b. Enhance relations with current and potential assistance providers (State or organization) with a view to maintain a 'brokerage' scheme to facilitate the provision of assistance targeted according to priorities identified by the CTC.

c. Technical assistance should be considered as a horizontal priority of all the CTC's work. In the future, assistance should be addressed in a tailored approach to each state taking into account its own specific characteristics. Therefore, every single part of the letters should take into account the question of assistance. For example, while identifying a problem the CTC should also offer itself to help the State in the process of finding adequate technical assistance. The CTC should also encourage States to assist others in particular fields in which they have special expertise or experience.

d. Serve as a focal point for counter-terrorism action plans, including assistance programs, undertaken by international and regional organizations, in as much as the CTC should be consulted when those action-plans and assistance programs are elaborated by international organizations for the purpose of implementing the Resolution. Urge States to submit requests for assistance to relevant organizations as such requests are often a prerequisite for obtaining assistance.

e. Monitor the assistance provided to States, including by field missions, with consent of the States concerned, both to confirm its suitability in relation to the identified needs and, equally, to ascertain its effectiveness and the results which it has helped to achieve.

f. The present structure of the Technical Assistance Team should be reconsidered. Assistance would be no longer a separate part of the CTC's work but one of its main priorities, therefore, a reinforcement of experts in technical assistance will be needed.

IV. COORDINATION AND COOPERATION WITH INTERNATIONAL, REGIONAL AND SUB-REGIONAL ORGANIZATIONS

The CTC has established a high level of co-operation with a number International, Regional and Sub-regional Organizations in terms of information flow on the nature of assistance programs related to the Resolution.

The desired level of co-operation and co-ordination between the organizations and the CTC has not yet been fully achieved. While initial contacts have been established, the modalities for exchange of crucial information with certain International Organizations cannot be formalized through mere contact points, due to the confidentiality rules and the regulations under which the international organizations operate. These constraints apply, in particular, to evaluations and assessments that require the State's consent for the release of information.

Greater co-ordination will be required, particularly with regard to new or existing programs of international organizations. So far, the CTC has mostly been engaged in collecting information concerning these programs with a view to advising needy States of their availability. It will be necessary for the CTC independently, or jointly with international organizations, to be able to undertake monitoring and evaluation of effective implementation of these programs.

In those cases where regional or sub-regional organizations lack the capacity to fulfill the role that the CTC has set for them, it will be necessary for the CTC to explore ways it can provide some guidance considering that they are generally those organizations whose member states are furthest behind in fulfilling their obligations under the Resolution.

Finally, the CTC should explore ways to formalize its relationship with international, regional and sub-regional organizations in order to be able to share essential information and work together for the effective implementation of the Resolution.

V. CTC'S STRUCTURE AND PROCEDURES

A. CTC'S PROCEDURES

A.1. Reevaluating Stages A, B and C

Reevaluating identifying stages A, B and C is an essential issue in order to ascertain how the CTC could move ahead with its monitoring mechanism. At the beginning of the CTC's work, Stage A required that Member States should have adequate legislation in place to combat terrorism. Stage B aimed at having executive

machinery in place with corresponding legislative measures reported to the CTC under Stage A. Stage C addresses interstate co-operation to fight terrorism, which also requires, the existence of legislative measures in place, as well as an executive machinery enforcing those measures. It derives from the above that the three Stages are interrelated and could be classified in two categories: legislative and operational.

As far as the CTC monitoring the adoption of necessary legislation by Member States, the categorization of the CTC's work into the previous stages has become progressively artificial. While this served well at the early stages of the work of the CTC, today, this categorization may limit the CTC in moving ahead with its monitoring mechanism.

Another problem directly related with the stages system is that United Nations Member States are perceiving it as a kind of evaluation by the CTC of their performance in the field of fighting terrorism. Furthermore the stages do not provide either the CTC, the Security Council or the United Nations with clear a picture of the States' real situation or efforts in their implementation of resolution 1373. In addition to all this, the absence of a clear procedure and criteria to determine whether a State is in stage A or B or C have caused serious problems among the CTC's work. For all these reasons, a reevaluation of stages A, B and C is therefore needed to better reflect States' implementation of Resolution 1373. This could include a method for providing the Security Council and States with more detailed information concerning their progress in implementing Resolution 1373.

A.2. The need for consistency. The present system of writing the drafts of the letters that the CTC's addresses to Member States which are first discussed in the subcommittee and then passed to the committee for final approval has led to a lack of consistency between some of them (differences in wording, the way subjects are considered, how questions are asked, etc.). The CTC should implement a system that corrects this problem while taking into account a tailored approach.

It is also important to establish a formal mechanism to allow all Member States of the CTC to express their views directly to the sub-committees.

A.3. Decision making mechanism. Continuing to recognize the convenience of working by consensus, in order to foster the work of the CTC, it should take progressively more advantage of issuing mandates to the Chair, the Bureau or other to

carry out certain aspects of its own work so it can be done in a more efficient way. These mandates should be concrete while having a certain degree of flexibility and will always be under proper supervision of the CTC. At the same time, all relevant actions should be presented to the CTC for its approval.

A.4. Adequate follow-up of CTC's decisions. The present structure of the CTC is adequate for its present tasks but it is insufficient if the CTC wants to be sure that it's own decisions are properly carried out. A check out mechanism should be established that can enable the CTC not only to follow up it's own work but also evaluating it in order to find ways to improve it.

A.5. CTC's information sources. At the present moment the main source of information for the CTC are the reports send by member States answering to the CTC's previous letters to them. By strengthening its co-operation with international organizations and with other UN bodies (such as the 1267 Committee) the CTC has improved its sources of information. However, further steps should be taken in this direction such as the creation of a small team dedicated to gather information from other sources or the possibility to ask for concrete information to other parts of the UN System.

B. FINANCIAL ACCOUNTABILITY

With the present structure of the CTC it is not easy to have a clear idea of its costs or the resources available to it. This situation prevents the CTC from having an accurate evaluation of its performance. In this sense, a complete budget may also be necessary to allow a certain degree of accountability of the CTC's work by the Security Council and the United Nations.

C. COMMUNICATIONS POLICY

In order to make international public opinion aware of what the United Nations is doing for the fight against terrorism, at the global level and in co-operation with all Member States, it is necessary to develop a communications policy, as was done for other important issues like human rights, drugs, land mines, etc. The CTC has to be

seen to be taking a leading role on a matter that is at the center of the world's attention. There is an urgent need to have expertise in this area.

The website of the CTC requires improvement. Firstly, it has to be kept up-dated in all the official languages since now it is the main source of public information about what the CTC is doing in counter-terrorism. In terms of presentation, some changes are also necessary better to reflect all aspects of the CTC's work.

D. THE CHAIR

The main role of the chair should be that of building and maintaining consensus among Member States about the importance of the fight against terrorism for the international community while, at the same time, giving substantive political direction to the work of the CTC.

At the present moment the chair is also in charge of day to day matters (logistics, meetings, personnel, etc.) which demands a considerable amount of time and resources. Because of this and due to the CTC´s present structure, only a medium size or larger delegation would be able to carry effectively the job. As such restriction is not politically wise there is an urgent need to provide the chair with the proper permanent structure that will allow a small sized Missions to take the chair without any negative impact on the CTC´s work.

E. THE BUREAU

In order to deal, in a more efficient and expedited way, with an array of issues that do not merit to be brought to the level of the plenary of the Committee for action, it is essential to revitalize the role of the Bureau of the CTC. The Chairman could get the agreement of the other members of the CTC regarding the nature of those issues that taken by the Bureau, later informing the rest of the Committee about the decisions adopted.

At the same time, the Bureau needs to give to the Sub-Committees guidelines to harmonize and assure the necessary consistency in their work of conducting a dialogue with the Member States.

F. THE SECRETARIAT

At the present moment the secretariat personnel assigned to the CTC depends directly from the Secretariat of the United Nations. The CTC and the Chair since the later is, at the present stage, the day to day head of the CTC, should have a voice in the recruitment and selection of these personnel, as well in the evaluation of their performance.

G. THE EXPERTS

To date, CTC "experts" have been considered as short-term consultants for contractual purposes, and thus have been recruited under "Special Service Agreements" (SSAs). SSAs are designed mainly for one-off, temporary situations. Thus it provides only a salary without any other benefits accorded to persons hired by the UN under other contractual arrangements. This circumstance is in contrast to the reality of the CTC. Due to the CTC's need for continuity and consistency, expert positions have been fielded for periods of time well exceeding one year. CTC experts possess highly specialized backgrounds and experience, and they are recruited on the basis of a broad geographical distribution. This results in situations where senior people with unique qualifications in the limited field of counter-terrorism are expected to come to New York for an indefinite period of time but with only a short-term assurance of compensation, without any benefits that would make living in New York feasible, let alone compensate them for the disruption of their careers. In most cases this also results in a disruption of their family lives as well, since without the usual benefits such as medical insurance etc., it is unthinkable to bring their families.

Since today all experts dependent directly from the Chair it has been obliged to assume the role of chief of personnel which consumes a lot of time and effort. In this aspect there is also a need to have a coordinated and unified voice from the team of experts.

In conclusion, the present contract situation of the CTC's experts should be reviewed in order to find a better and more satisfactory way to assure proper long-term commitment to the CTC while providing just working conditions.

VI. GENERAL CONCLUSIONS

From all the above issues it is clear that the implementation of Resolution 1373 is encountering serious problems, both at the States and at the Counter Terrorism Committee levels. These should be tackled in a comprehensive way due to the intimate interaction between them and the urgency of the task. In order to find adequate solutions to all, or most of them, the present Chair of the CTC should summit a further report including specific and practical measures to be taken in the near future in order to comply with the CTC´s task of implementing Resolution 1373.